

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A VARIANCE
PERMIT GRANTED TO VAN A.
WILLIAMS BY CHELAN COUNTY
AND DENIED BY THE DEPARTMENT
OF ECOLOGY

VAN A. WILLIAMS AND CHELAN COUNTY,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

SHB No. 78-33

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the partial disapproval of a variance permit, came before the Shorelines Hearings Board in Wenatchee, Washington on February 15, 1979. Hearing examiner William A. Harrison presided alone. Reporter Henry E. Neer recorded the proceedings.

Appellant, Van A. Williams, was represented by his attorney Milburn D. Kight. Respondent, Department of Ecology was represented by Robert V.

1 Jensen, Assistant Attorney General. Appellant, Chelan County, failed to
2 appear but was allowed to file a motion and response to exceptions after
3 the hearing.

4 Having considered appellant Chelan County's Motion for Dismissal and
5 Affirmance of Permit and supporting affidavit received April 16, 1979,
6 having considered Department of Ecology's Memorandum in Response received
7 May 2, 1979 and Chelan County's Supplemental Memorandum received May 10
8 1979, that Motion is now denied.

9 The Board having read the transcript of the proceedings, having examined
10 the exhibits, having considered the records and files herein and having
11 reviewed the Proposed Findings of Fact, Conclusions of Law and Order
12 of the Presiding Officer; and

13 The Board having received Exceptions to said Proposed Findings of
14 Fact, Conclusions of Law and Order from Department of Ecology on April
15 1979; and Response to Exceptions from appellant Williams on April 30,
16 1979; and Response to Exceptions from appellant Chelan County on April
17 1979; and having considered and denied Department of Ecology's exceptions,
18 the Board makes these:

19 FINDINGS OF FACT

20 I

21 The appellant and his wife own and reside upon a waterfront lot
22 on Lake Chelan. The lot is bordered on two sides, the north and east,
23 by the waters of the lake. Their home is approximately 70 years old
24 and was moved from a lower elevation to its present location when
25 construction of the Lake Chelan Dam caused the water level to rise.
26 The appellant purchased the home and lot 22 years ago. Thus, both

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1 the relocation and the appellant's purchase of the house occurred
2 prior to enactment of the Shoreline Management Act of 1971, chapter
3 90.58 RCW.

4 II

5 When, on April 22, 1975, Department of Ecology approved the
6 Chelan County Shoreline Master Program calling for a 20-foot
7 residential setback from the water, Section 16 d, appellant's
8 residence was already located only 14 feet from the water on the
9 north side. We take official notice of this master program and that
10 it designates the site of this appeal as within an "urban
11 environment". Appendix A, page IX, paragraph 9.

12 On June 23, 1978, appellant applied to Chelan County for a
13 shoreline variance permit to construct a deck on the north and east
14 faces of his residence. The northerly portion of the deck as
15 applied for, would extend to a point three feet, three inches
16 from the water (10 feet, 9 inch deck width) while the easterly
17 portion would extend to a point five feet, eight inches from the
18 water (14 feet, 4 inch deck width). This deck would not reduce
19 the view from neighboring residences. The northerly portion would
20 accommodate an outdoor dining area from which there would be a view
21 to the west, that is, up Lake Chelan. Outdoor dining on the northerly yard,
22 from which the same view would occur, is not practical due to the
23 lake water which regularly spills over the breakwater onto the
24 yard. A view up the lake (west) is currently available from inside
25 appellant's house.

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27 AND ORDER

1 III

2 On August 14, 1978, after public hearing, Chelan County approved
3 appellant's application for a variance permit and forwarded it to
4 respondent, Department of Ecology.

5 On September 20, 1978, respondent disapproved the proposed
6 variance permit but indicated its approval of a reduced deck. The
7 northerly portion of the deck which respondent would approve would
8 extend to a point ten feet from the water (4 foot deck width) while
9 the easterly portion would extend to a point six feet from the water
10 (14 foot deck width). These were the dimensions recommended to Chelan
11 County by its planning staff and which Chelan County rejected in
12 approving the variance application as made by the appellant. The
13 reduced deck which respondent would approve precludes practical use
14 of the northerly portion for outdoor dining and hence an uplake
15 (westward) view while dining. The northerly portion of that deck would
16 only serve as a walkway to the easterly portion which would
17 permit outdoor dining with only a cross-lake (northward) view.

18 IV

19 Decks built onto residences are a common amenity of living on the
20 waterfront lots of Lake Chelan. It is common to build such decks on
21 the lakeward face, rather than the sides of residences, to afford
22 viewing of the lake's length as well as its width. Such decks
23 normally accommodate an area large enough to dine or relax upon while
24 enjoying the extended view.

25 At other locations within the southern quarter of Lake Chelan
26 decks, as built, penetrate to or beyond the bulkheaded water line.

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1 On January 17, 1979, respondent approved a variance permit issued
2 by Chelan County to one Norman P. Huber for construction of a deck
3 extending eight inches beyond the water line at a location
4 northwest of appellant but within the southern quarter of Lake
5 Chelan.

6 V

7 Any Conclusion of Law which should be deemed a Finding of
8 Fact is hereby adopted as such.

9 From these Findings the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 The respondent, Department of Ecology, is to adopt rules
3 to allow for the varying of local shoreline master programs.
14 RCW 90.58.100(5). The respondent's rule for variance permits,
15 WAC 173-14-150 (effective July 14, 1978), controls the matter now
16 before us and provides in pertinent part:

17 REVIEW CRITERIA FOR VARIANCE PERMITS. The
18 purpose of a variance permit is strictly
19 limited to granting relief to specific
20 bulk, dimensional or performance standards
21 set forth in the applicable master program
22 where there are extraordinary or unique
23 circumstances relating to the property
24 such that the strict implementation of the
25 master program would impose unnecessary
26 hardships on the applicant or thwart the
27 policies set forth in RCW 90.58.020.

(1) Variance permits should be granted
in a circumstance where denial of the permit
would result in a thwarting of the policy
enumerated in RCW 90.58.020. In all instances
extraordinary circumstances should be shown
and the public interest shall suffer no
substantial detrimental effect.

(2) Variance permits for development that

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1 will be located landward of the ordinary high
2 water mark (OHWM), as defined in RCW 90.58.030
3 (2)(b), except within those areas designated
4 by the department as marshes, bogs, or swamps
5 pursuant to chapter 173-22 WAC, may be
6 authorized provided the applicant can demonstrate
7 all of the following:

8 (a) That the strict application of the bulk,
9 dimensional or performance standards set forth
10 in the applicable master program precludes or
11 significantly interferes with a reasonable
12 permitted use of the property.

13 (b) That the hardship described in WAC 173-14
14 -150(2)(a) above is specifically related to the
15 property, and is the result of unique conditions
16 such as irregular lot shape, size, or natural
17 features and the application of the master program,
18 and not, for example, from deed restrictions or
19 the applicant's own actions.

20 (c) That the design of the project will be
21 compatible with other permitted activities in
22 the area and will not cause adverse effects to
23 adjacent properties or the shoreline environment
24 designation.

25 (d) That the variance authorized does not
26 constitute a grant of special privilege not enjoyed
27 by the other properties in the area, and will be
the minimum necessary to afford relief.

(e) That the public interest will suffer no
substantial detrimental effect.

4) In the granting of all variance permits,
consideration shall be given to the cumulative
impact of additional requests for like actions in
the area. For example if variances were granted
to other developments in the area where similar
circumstances exist the total of the variances
should also remain consistent with the policies
of RCW 90.58.020 and should not produce substantial
adverse effects to the shoreline environment.

II

The strict implementation of the master program would impose
an unnecessary hardship upon the appellant due to the extraordinary
circumstance that appellant's residence was positioned forward
of the normal setback line and was purchased by appellant many

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1 years before that setback was adopted. The effect would be to
2 preclude a deck suitable for a view parallel to and across the lake while
3 dining or relaxing and such a deck is a reasonable, permitted use of the
4 property. This hardship is not the result of the appellant's
5 own actions.

6 III

7 The deck proposed by the appellant is compatible with the
8 permitted activities in this residential area. No adverse environmental
9 effect will result to adjacent properties nor to the permitted uses
10 found in this urban shoreline environment.

11 IV

12 The deck proposed by the appellant would not constitute a
13 grant of special privilege not enjoyed by other parties in the area.

14 V

15 The deck proposed by the appellant is the minimum necessary
16 to afford relief, that is, a deck suitable for parallel and cross lake
17 viewing while dining or relaxing.

18 VI

19 The deck proposed by the appellant would not cause any
20 substantial detrimental effect to the public interest.

21 VII

22 Regarding the cumulative impact of additional requests for
23 like variance permits, we note that each such request must be
24 decided upon its own specific facts. Additional requests for like
25 actions in like areas would not be inconsistent with the policies
26 of RCW 90.58.020 and should not produce adverse effects to the

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1 shoreline environment. Any material difference between the facts
2 of a future request and the facts of this case, however, may
3 properly result in the denial of that future request for variance.

4 VIII

5 Any Finding of Fact which should be deemed a Conclusion of
6 Law is hereby adopted as such.

7 From these Conclusions the Board enters this

8 ORDER

9 The Department of Ecology's action denying a variance permit
10 is reversed and the matter is remanded for issuance of a permit
11 consistent with this Order.

12 DONE this 20TH day of June, 1979.

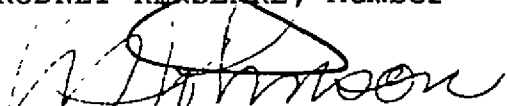
13 SHORELINES HEARINGS BOARD

14 
15 DAVE J. MOONEY, Chairman

16 (SEE CONCURRENCE)

17 DAVID AKANA, Member

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19 RODNEY KERSLAKE, Member

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21 WILLIAM A. JOHNSON, Member

22 (SEE DISSENT)

23 CHRIS SMITH, Member

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1 SMITH, Chris (dissenting)--I disagree with the majority of the
2 Board. The review criteria for variance permits allow no greater
3 variance than the minimum necessary to afford relief. WAC 173-14-150(2)(d).
4 The Department of Ecology's action represents an approval of only that
5 minimum and no more.

6 I would affirm the action of Department of Ecology.

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9 CHRIS SMITH, Member

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26 J FINAL FINDINGS OF FACT,
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1 AKANA, David (concurring)--Landfills are permitted in urban
2 environments under certain conditions. Section 22.1 of the Shoreline
3 Master Program (SMP). It is possible that appellant could fill underwa
4 shorelines in his ownership to create a site that would meet the setback
5 requirements of the SMP. Tr.72. See Section 22.1.5. In such case, a
6 variance might not be necessary to build the proposed development. The
7 deck, as proposed, would have less of an impact upon the shoreline than
8 would a fill running, perhaps, 100 feet into the lake. For that reason
9 I would concur with the result reached by the majority.

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12 DAVID AKANA, Member
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